>> GOOD MORNING.
MAY IT PLEASE THE COURT I REPRESENT TIMOTHY FLETCHER.
THIS IS INDEED ALSO CURSORY SENTENCING AND A CASE WHERE THE ISSUE OF THE CHECKBOX WAS RAISED IN THE BRIEF.
IF I MAY ON REFLECTION I AGREE WITH WHAT JUSTICE CANADY SAID WHICH IS THAT THE ISSUE WAS WAIVED IN THIS CASE BECAUSE DEFENSE COUNSEL I ASKED ABOUT THE TRIAL JUDGE DO YOU HAVE ANY OBJECTION TO THE VERDICT FORM AND THE ANSWER WAS THERE IS A TYPO.
SINCE WE AGREED ON ASKING THE JOURNEY TO ANY OF YOU AGREE WITH ANY OF THIS YES OR NO I HAVE TO CONCEDE THAT WE ARE IN NO POSITION.
IT IS I ALSO AGREE WITH THE VIEW EXPRESSED THAT THE QUESTION IS NOT OPTICALLY HELPFUL AND PERHAPS THE JURY INSTRUCTION SHOULD TAKE A LOOK AT THE VERDICT FORM.
I KNOW THE PUBLIC DEFENDER ASSOCIATION HAS A FEW WORDS TO SAY TO THEM THAT WE WOULD LIKE TO SAY TO THE JURY INSTRUCTION COMMITTING ON THATCH COMMITTEE ON THAT.
WE DO SEE FROM THE RECORD ON THIS CASE THAT THE JUDGE WAS NOT HAPPY WITH THIS AT JUSTLY I THINK THAT HIS JOB WAS MADE MORE DIFFICULT WHEN HE HAD TO SORT OUT ALL THE MITIGATION HIMSELF BUT IN THE SENTENCING ORDER AND IN THE DEFENSE SENTENCING MEMO BOTH THE DEFENSE COUNSEL AND THE JUDGE CAME AND EXPRESSED MAY THEY JUST DIDN'T THINK ANY OF IT WAS MITIGATING MAYBE THEY DID THINK ABOUT IT BUT I WOULD ASK THE COURT TO NOT SO MUCH REMAND AS REFERRED THIS MATTER TO THE MATTER OF THE CHECKABLE BOX TO THE JURY INSTRUCTION COMMITTEE AND HAVING SETTLED AT THE CHECKBOX IS QUITE SIGNIFICANT IN THIS CASE BECAUSE IN THAT THE JUDGE FOUND EVEN GIVEN THE CHECKBOX THE CASE WAS A CLOSE CALL IN HIS MIND.
THAT'S RECORD PAGE 4123 IN THE SENTENCING ORDER.
THIS IS A SENTENCING AND THE COURT LAST SAW THIS CASE IN 2015 AND A GREAT DEAL HAPPENED BETWEEN THEN AND NOW.
NOT ONLY AFTER A PLANTER HE SENTENCING DO YOU HAVE A JUDGE FIND IT A CLOSE CALL BUT YOU HAVE A JUDGE WHO FOUND THE VIOLENCE WAS IMPULSIVE REACTION TO UNEXPECTED RESISTANCE AND THAT'S ALSO IN THE SENTENCING ORDER ON PAGE 4105.
THE JUDGE SAID THAT IN THE CONTEXT OF GIVING ONLY A LITTLE WAY TO DO THAT WITH WEIGHT TO THE AGE OF 25 IN THE JUDGE SAID YES IT IS IMPULSIVE THE ACTION WAS IMPULSIVE BUT IT DIDN'T COUNT CUT MUCH ICE WITH HIM.
ANOTHER THING THAT HAPPENED IN THE COURT LAST TIME THEY SAW THE CASE WAS THAT THE STATE CONCEDED THAT WHAT HAPPENED AFTER THE DEFENDANT'S STORIES DIVERGE WOULD HAPPEN AT THE SCENE IS NOT EXACTLY CLEAR.
IT IS NEW ALSO.
IN LIGHT OF ALL OF THAT IS THE POSITION ABSENT OF THIS INSTRUCTION

ABOUT THE FUNDAMENTAL ERROR IN THIS CASE I NEED TO DISTINGUISH THIS CASE OBVIOUSLY FROM THE 2021 DECISION OF THE COURT IN THE CHRISTIAN CRUISE CASE.
>> AND ON THAT, CAN YOU TELL US WHAT WOULD BE THE TRICKER FOR REQUIRING A TYSON INSTRUCTION.
IS IT ANY TIME THERE IS SUBSTANTIAL PARTICIPATION IN A MURDER OF A CODEFENDANT?
I'M SORRY
>> THAT'S ALL RIGHT.
THE JURY INSTRUCTION COMMITTEE HAS AMORTIZED IT DURING THE COURSE OF THE APPEAL.
THEY ISSUED A STANDARD JURY INSTRUCTION NUMBER 7.14 WHICH SETS OUT THE EXCUSE ME.
FOUR POSSIBILITIES.
INCLUDING THE DEFENDANT IN THE CLASS OF INDIVIDUALS WHO ARE ELIGIBLE FOR DEATH.
EMMETT TYSON –
>> YOU ARE SUGGESTING THE TRIGGER SHOULD BE DEATH ELIGIBILITY.
>> IT HAS TO BE A FELONY MURDER CASE.
IT HAS TO BE SOME DISPUTE OVER WHO THE ACTUAL KILLER WAS I THINK.
I'M PRETTY SURE THAT IS A FLOOR FOR EMMETT ENTICING TO COME INTO PLAY AND THAT'S VERY MUCH THE SITUATION IN THIS CASE.
ON THE THIRD DAY OF PENALTY PHASE THE JUDGE SAID ON THE RECORD THIS IS A WHO DONE IT.
>> AND YOUR SUGGESTING IT WILL BE FUNDAMENTAL ERROR- I THINK THE WAY FUNDAMENTAL ERROR CASES WORK YOU HAVE TO PROPOSE THAT IT IS ALWAYS ERROR FOR THIS NOT TO BE GIVEN.
THE COURT RETAINS NO DISCRETION TO SPEAK TO THE SPECIFIC FACTS OF THE CASE IF THERE IS A FELONY MURDER AND ITS DEATH ELIGIBLE AND THERE'S ANY CONCEIVABLE DISPUTE ABOUT A CODEFENDANT BEING INVOLVED THEN AT THE RULE YOU'RE ASKING US TO ADOPT IS ALWAYS FUNDAMENTAL ERROR TO NOT GIVE INTO TYSON.
>> FUNDAMENTAL ERROR DEPENDS UPON A SHOWING OF HARM AND I THINK I HAVE THAT IN THE CASE WHICH MR. CRUISE DID NOT.
MR. CRUISE WAS A SIMPLE MODEL OF THE CASE WHERE THERE WERE TWO DEFENDANTS ONE VICTIM ONE GUN ONE SHOT FIRED IN THE BACK OF THE HEAD.
SOMEBODY DID IT AND SOMEONE DID NOT DO IT AND THE JURY'S GUILT PHASE FINDINGS IN CRUISE ESTABLISHED THAT CRUISE WAS ARMED.
AND THE WAY THE COURT I THINK WOULD HAVE BEEN MAD TO FIND THAT THE AMORTIZING INSTRUCTION WAS NOT GIVEN BECAUSE THERE'S ONLY ONE CONCEIVABLE OUTCOME BUT THIS CASE IS QUITE DIFFERENT.
>> HOW DOES IT FIGURE INTO THIS ISSUE THAT IT SEEMS TO BE UNDISPUTED THAT THE DEFENDANT HERE WAS THE MASTERMIND GOING TO A

STEP GRANDMOTHER OR WHATEVER THE RELATIONSHIP WAS.
HE WAS THE ONE WHO KNEW HER AND DID NOT LIKE HER AND HE IS THE ONE THAT THOUGHT SHE HAD MONEY AND THAT IS WHY THEY WENT THERE.
AND NO QUESTION ABOUT THAT IS THERE?
>> NO HE DIDN'T PLAY OUT THE ROBBERY BUT AGAIN YOU HAVE A JUDGE FINDING THAT THE VIOLENCE WAS IMPULSIVE AND NOT IN FACT PLANNED.
>> I'M SORRY BUT REGARDLESS IF THE EXTENT TO WHICH WAS IMPULSIVE THERE IS NO DISPUTE THAT BOTH OF THE MEN WERE VERY MUCH INVOLVED PHYSICALLY.
>> THEY BOTH HAD HANDS ON HER.
>> ARE YOU SAYING FOR THIS EDMUND TYSON THINK THERE WAS NO ELEMENT OF THRESHOLD REQUIREMENT OF RELATIVELY MINOR PARTICIPATION THAT HAS TO BE ESTABLISHED OR AT LEAST POSSIBLY THERE BEFORE THIS COMES INTO PLAY?
WHEN TWO PEOPLE ARE EQUALLY INVOLVED WITH THIS IT DOESN'T SEEM LIKE THIS ISSUE EVEN COMES INTO PLAY.
>> IF I UNDERSTAND THE QUESTION CORRECTLY TYSON CASE IT CLARIFIES THIS AND SAYS AT A MINIMUM TO BE ELIGIBLE FOR THE DEATH PENALTY THE DEFENDANT HAS TO BE A MAJOR PARTICIPANT IN THE UNDERLYING FELONY AND HAS TO HAVE EXHIBITED RELATIVE INDIFFERENCE TO HUMAN LIFE.
>> BUT OF THE FACTS WE HAVE HERE I DON'T SEE HOW HE CAN GET OVER THAT THRESHOLD.
>> THE ANSWER TO THAT QUESTION YOUR HONOR MAJOR PARTICIPANT I THINK THE STATE HAS A LOT ON THAT AND THAT HE DID PLAN THE ROBBERY AND GET THEM THERE.
IT IS –
>> WHAT HE HAS HANDS ON HER AND IS DOING ALL THE STUFF AND IS ANGRY AND THE IDEA THAT THAT IS IT DOESN'T MEET THE OTHER PART OF AT LEAST RECKLESS INDIFFERENCE.
YOU CAN LOOK AT THIS AND SAY THERE IS MUCH MORE THAN THAT.
I DON'T SEE HOW THIS EVEN FALLS IN THE UNIVERSE OF THAT CASE.
I'M JUST FOLLOWING UP ON WHAT WAS SAID.
THE FACTS HERE JUST DON'T SEEM TO FIT WITH THOSE CASES WERE TALKING ABOUT.
>> WHAT WE DO KNOW IS OF THE JURY WAS VERY PARTICULAR ABOUT STANDARDS OF REVIEW AND THEY DID CHECK THE BOX KNOW FOR MITIGATION AND FOUND NOTHING MET.
BUT PREPONDERANCE 51 PERCENT.
THEY MAY AS WELL HAVE HAD A AS AN TYSON THE STATE HAS TO PROVE WITHOUT A REASONABLE DOUBT BOTH PRONGS MAJOR PER DISSIPATION THAT'S A LOT AND RECKLESS INDIFFERENCE.
I'M JUST NOT SURE WHAT A JURY WOULD HAVE MADE OF THAT BECAUSE INDIFFERENCE TO HUMAN LIFE IS TO MEET A VERY TREMENDOUS CULPABLE

STATE.
MEANING DIDN'T CARE AT ALL IF SHE LIVED OR DIED.
BUT RECKLESS INDIFFERENCE IS CLEARLY SOMETHING MORE AND I THINK A RATIONAL JURY COULD HAVE SOME TROUBLE WITH THAT IN A CASE WHERE THE STATE WAIVED DEATH AS TO ONE.
AT A CLOSER CASE NOW THAN IT WAS IN 2015 WHEN THE COURT LAST THOUGHT IT FOR THE REASONS I SAID EARLIER.
THE IMPULSIVE REACTION FINDING HIS CONCEDING IS NOT CLEAR WHAT HAPPENED AFTER THE DEFENDANT STORIES DIVERGE SO I SUBMIT THERE IS AN ISSUE HERE AND I'M CASES FROM 2005 WHERE PEREZ FILLS THE ROLE IN THIS CASE IN THIS CONTEXT IN THAT THE COURT LEADS UP TO AND INCLUDES A 2005 IN PEREZ REQUIREMENT NOT ONLY INSTRUCTION BUT FINDING FROM THE JURY IN THE JURY INSTRUCTION COMMITTEE CLEARLY IN 2023 IS UNDER THE IMPRESSION THAT THAT IS STILL THE LAW.
I HOPE THE COURT IS NOT CONSIDERING RECEDING FROM PEREZ VERSUS STATE IN LIGHT OF CRUISE.
I SUBMIT THAT WILL BE A MISTAKE BECAUSE CRUISE IN WITH THE CASE WE SPOKE ABOUT BEFORE WITH THE WOMAN SHOT IT WENT BACK BECAUSE IT WAS BROUGHT DOWN IN THE SEVENTH AND BOTH CASES ARE TRIED SEPARATELY IN BOTH RECORDS WERE IN FRONT OF HIM WITH THE SENTENCING ORDER AND THE COURT SAID YOU CAN’T RELY ON BOTH YOU CAN ONLY RELY ON WHAT WAS INTRODUCED AGAINST MR. CRUISE.
SO THE CASE WAS REDACTED AND THE JUDGE SAID YES I MEANT THAT FOR CRUISE UNLIKE MR. CHARLES THE DEFENDANT.
AND ON APPEAL IN 2023 THE DEFENDANT ARGUED WELL, YOU HAVE TO GIVE ME LIFE BECAUSE MY CO DEFENDANT GOT LIFE FROM THE SAME JUDGE AND THERE'S NOT THAT MUCH TO CHOOSE BETWEEN US AND THE COURT SAID NO FOR TWO REASONS.
FIRST THERE'S A LOT TO CHOOSE BETWEEN THE PERSON TO PUT A BULLET IN THE BACK OF SOMEONE'S HEAD AND SOMEONE WHO WAS STANDING BY AND THE SECOND REASON-I'M SORRY I LOST MY TRAIN OF THOUGHT.
I'M SORRY YOUR HONOR.
YES, THEY SAID WE ARE NOT IN THE BUSINESS OF CUTTING DEATH SENTENCES DOWN TO LIFE SENTENCE BECAUSE SOMEONE ELSE GOT A LIFE SENTENCE WERE NOT DOING IN ANY CONTEXT THAT'S ALL BEING ASKED HERE.
TYSON CREATES A CATEGORICAL EXCLUSION FROM THE DEATH PENALTY.
THIS IS NOT A MITIGATION CASE OR AN AGGRAVATION CASE IT IS VERY MUCH A THIRD THING.
AND I THINK GIVEN THE PROMINENCE OF THE JURY'S ROLE IN FLORIDA THAT THIS COURT SHOULD STICK WITH PEREZ BECAUSE IT SHOULD GO TO THE JURY TO DETERMINE THESE DIFFICULT ISSUES.
>> ON THE ISSUE OF FUNDAMENTAL VERSUS HARMLESS AREA THE FACT THAT THE JURY KNOWS OF THE LIFE SENTENCE DOES THAT WAY IN?

CAN THEY CONSIDER WHAT THEY WOULD IN THE CONTEXT OF THIS INSTRUCTION AND REACH CONCLUSION?
>> YOUR HONOR WE DID GET ALL THE LITIGATION WE WANTED.
I', SORRY I DIDN'T HEAR THE QUESTION.
>> THE JURY KNEW THE BROWN LICENSE CORRECT?
THE MITIGATION.
>> OVER THE STATE'S OBJECTION CAME INTO EVIDENCE AND WERE ARGUED AS MITIGATED.
>> WHY DOESN'T THAT CREATE THE CONTEXT THE JURY NEEDS TO REACH THE SAME CONCLUSION OR TO MAKE THE SAME CONSIDERATION IF THE INSTRUCTION THEY ARE ADVOCATING FOR HASN'T HAPPENED.
>> BECAUSE EMMETT AND TYSON ARE A THIRD THINKER MITIGATION WE GOT ALL THE MITIGATION WE WANT WE ARGUED HARD FOR IT AND GOT IT.
THAT MIGHT BE HOW IT CAME ABOUT THAT NO ONE ASKED FOR AN AMATEUR IS AS HE INSTRUCTION I DON'T KNOW HOW THAT HAPPENED I CAN CALL THE TRIAL COUNSEL AND ASK THEM BUT NO I DON'T THINK IT SUBSTITUTES BECAUSE OF UNDER TYSON AND PEREZ THEY HAVE TO FIND BEYOND A REASONABLE KEEP GOING BACK TO WHAT WE JUST SAID NOT KNOW AND WAS AWARE OF THE FACT THAT THE CODEFENDANT WELLS >> BROWN.
>> GOT A LICENSE AND PLEA DEAL AND GIVEN THE ACTUAL PLEA PAPERWORK TO LOOK AT AND SHOULD I'M SURE THE PROSECUTOR WAS SCREAMING IN OBJECTING BUT THE JURY WAS ALSO TOLD TO CONSIDER THE CODEFENDANT'S LIFE SENTENCE AS MITIGATED LITIGATOR.
>> BY COUNSEL YES.
>> THEY WERE TOLD THAT.
I MEAN SO THE JURY WAS AWARE OF IT.
THEY WERE TOLD TO CONSIDER A BY COUNSEL AS A MITIGATE THEY GIVEN THE FACT OF THE CASE THEY CHOSE NOT TO DO IT.
ISN'T THAT WHAT JURIES ARE SUPPOSED TO DO WEIGH THE EVIDENCE AND DECIDE.
>> JUDGE I WILL RELY ON BOARD VERSUS CALIFORNIA WHERE THE U.S. SUPREME COURT HELD THAT THE ARGUMENT OF COUNSEL IS JUST NOT GIVEN ATTENTION OR OBEDIENCE BY THE JURY THAN WHAT THE COURT SAYS.
>> BUT I KEEP ARGUING EVEN EARLIER THAT THIS ACTION HERE WAS IMPULSIVE BUT MY UNDERSTANDING FROM WHAT I READ IS THAT THIS WHOLE CRIME AND WHAT THIS POOR LADY WENT THROUGH TOOK A WHILE.
IT WASN'T JUST A REAL QUICK THING.
THEY BEAT HER AND STRANGLED HER AT THE END ONE OF THEM PUT A BAG OVER HER HEAD AND THEN MR. FLETCHER TRIED STRANGLING HER WITH A CHORD.
I MEAN IT WASN'T A SUDDEN IMPULSE THING.
THIS WENT ON FOR QUITE SOME TIME.
>> YOU HEARD THE CONFESSION AND THE MEDICAL EXAMINER'S EVIDENCE AND HE FOUND IT WAS IMPULSIVE.

AND THE JUDGE FOUND THAT I'M SORRY I LOST MY TRAIN OF THOUGHT AGAIN I'M SORRY.
THE JUDGE IS GREATLY RESPECTED AND PART OF THE WORLD I SAT IN ON A THREE DAY TRIAL IN HIS COURTROOM AND I THINK HE IS THE PERSON YOU WANT DECIDING THIS LIFE OR DEATH MATTER AND I THINK THAT HE WOULD HAVE GIVEN THIS INSTRUCTION IF HE HAD BEEN ASKED.
I THINK HE WAS OR IS PROBABLY IS BUT THAT'S PROBABLY BESIDE HIMSELF THAT HE LOST THE OPPORTUNITY TO ASK THE JURY AGAIN WHAT THEY THOUGHT ABOUT RELATIVE CULPABILITY.
ON THAT NOTE I WILL TENDER THE CASE.
>> THANK YOU.
>> GOOD MORNING.
MAY IT PLEASE THE COURT I AM DORIS MEACHAM AND I'M HERE ON BEHALF OF THE STATE.
I WOULD LIKE TO START WITH ADDRESSING THE POINTS OF THE KATE STATE NEVER CONCEDED THAT IT WAS UNKNOWN WHAT HAPPENED AFTER THE STORIES DIVERGED.
THE STATE ARGUED THAT MR. FLETCHER WAS INDEED THE ONE WHO STRANGLED AND KILLED THE VICTIM.
IT WAS NEVER CONCEDED THAT WE DID NOT KNOW WHO DID IT.
IT WAS NOT A WHO DONE IT.
IT WAS VERY CLEAR THAT IT WAS MR. FLETCHER.
THE EVIDENCE IN THE CASE POINTED IT TO MR. FLETCHER BEING THE ONE WHO KILLED THE VICTIM.
ONE OF THE THINGS THAT WAS BROUGHT OUT DURING TRIAL WERE THE SCRATCH MARKS ON HIS ARMS AND THE DNA FOUND UNDER THE VICTIM'S NAILS THAT MATCHED HIS DNA.
IT WAS NOT A WHO DONE IT.
BASED ON THAT I DON'T BELIEVE THAT EMMETT TYSON EVEN APPLIES TO THIS CASE.
AND I KNOW THAT THE DEFENSE COUNSEL ARGUED THAT IN CRUISE THE JURY MADE SPECIAL FINDINGS ON THE VERDICT FORM THAT CRUISE POSSESSED A FIREARM AND DISCHARGE THE FIRE CAUSING THE DEATH OF THE VICTIM AND THAT IS NOT FOUND HERE HOWEVER THE COURT FOUND THAT THERE WAS NO COMPETENCE OR SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE FINDING AND AFTER THAT THE COURT WENT THROUGH THE EVIDENCE AND FOUND THAT THERE WAS SUFFICIENT EVIDENCE TO FIND THAT CRUISE WAS RESPONSIBLE FOR THE DEATH AND ENTITLED TO THE VERDICT OF FIRST DEGREE MURDER.
>> THERE WAS NO SIMILAR DNA EVIDENCE FOUND ON BROWN'S PERSON?
>> BROWN HAD NO INJURIES WHATSOEVER ON HIS PERSON.
WHEN THEY FIRST INTERVIEWED MR. FLETCHER HIS STORY WAS THAT HE DIDN'T HAVE ANYTHING TO DO WITH IT AND BROWN WAS THERE AND ONCE THE POLICE CAME BACK WITH EVIDENCE THAT THEY HAD DNA THAT'S WHEN

HE STARTED TO CHANGE HIS STORY AND SAY YES I GOT THE SCRATCH MARKS IT WAS JUST FROM HOLDING HER DOWN BUT THERE WAS NO EVIDENCE OF ANY DNA FOR MR. BROWN FOUND ON THE VICTIM.
AND, AGAIN, IF YOU WANT TO LOOK AT WHETHER OR NOT HE WAS A MAJOR PARTICIPANT FLETCHER IS THE ONE, THE MASTERMIND BEHIND ALL OF THIS.
HE STOLE THE TIRE IRON AND HE IS THE ONE THAT CAME UP WITH THE IDEA TO BREAK OUT OF PRISON BECAUSE HE WAS JUST SENTENCED TO A TEN YEAR PRISON SENTENCE AND HE WAS NOT GOING TO SERVE THAT.
HE IS THE ONE THAT CLOGGED THE TOILET UP AND HE IS THE ONE THAT HAD THE PLAN TO GO TO THE VICTIM'S HOME BECAUSE HE KNEW SHE HAD A SAFE AND HAD MONEY.
IT WAS HIS IDEA TO GO THERE.
HE KNEW HOW TO GET INTO THE HOUSE.
HE IS THE ONE WHO TORTURED THIS WOMAN.
IT WAS NOT IMPULSIVE OR QUICK.
SHE DID NOT WANT TO GIVE THE NUMBER TO THE SAFE.
SHE DID NOT WANT TO OPEN UP BECAUSE SHE HAD NO MONEY IN THERE AND SHE KEPT TELLING HIM THAT.
THEY CHASED HER AROUND THE HOUSE AND SHE WENT TO THE BATHROOM AND LOCKED YOURSELF IN THE BATHROOM TO GET AWAY FROM THEM AND THEY MANAGED TO GET HER OUT.
SHE FINALLY OPENED THE SAFE AND THERE WAS NO MONEY IN THERE AS SHE HAD TOLD THEM.
THIS WAS NOT IMPULSIVE.
IT WAS NOT QUICK.
THIS WAS THOUGHT OUT AND HE HATED HER AND THERE WAS EVIDENCE OF THAT AND WHEN HE FOUND OUT THERE WAS NO MONEY AND SHE WAS USELESS TO HIM THEN HE GOT RID OF HER.
AS FAR AS THE JURY NOT FINDING ANY MITIGATION IN THIS CASE IT IS QUITE OBVIOUS THAT THEY DID NOT FEEL THAT IT WAS MITIGATING IN COMPARISON TO WHAT WAS FOUND IN THIS CASE.
THE JUDGE HIMSELF AND DOING AN SENTENCING ORDER DID FIND MITIGATION BUT MADE A NOTE OF THERE WAS NO NEXUS BETWEEN WHAT LITIGATOR WAS AND THE REASON FOR THE MURDER.
AND I BELIEVE THAT IS WHAT THE JURY DID IN THIS CASE AS WELL.
THEY CONSIDERED ALL THE EVIDENCE.
AND THEY DID NOT FIND IT MITIGATING IN COMPARISON TO WHAT OCCURRED IN THIS CASE.
AND THAT IS WHAT THEY ARE ENTITLED TO DO.
WHAT BLOCK IT STANDS FOR IS THAT BE PREVENTED FROM TELLING THE JURY ABOUT ANY RELEVANT MITIGATING EVIDENCE.
THAT IS WHAT IT'S FOR.
THAT IS NOT WHAT HAPPENED HERE WERE ALLOWED TO PRESENT EVERYTHING

THEY WANTED INCLUDING A LIFE SENTENCE.
WHAT THE JURY HAS TO DO IS TO LISTEN TO IT.
THEY DO NOT HAVE TO ACCEPT IT.
THEY DO NOT HAVE TO BELIEVE IT.
AND IN THIS CASE THEY DID NOT.
IF THERE ARE NO FURTHER QUESTIONS THE STATE AFFIRM MR. FLETCHER'S DEATH SENTENCE THANK YOU.
>> THANK YOU.
>> THE COUNCIL OF THE STATE DID SAY IN THE PENALTY PHASE THAT IT WAS NOT EXACTLY CLEAR WHAT HAPPENED AFTER THE STORY STARTED TO DIVERGE AND IT IS THE JUDGE WHO CALLED IT A WHO DONE IT IN TRANSCRIPT PAGE 607.
I SUBMIT TO YOU THAT THE SCRATCH MARKS ARE GIVEN TOO MUCH IMPORTANCE.
THIS WAS QUITE THE SCENE AS WE HAVE SAID IN MISSUS MEACHAM'S ARGUMENT AND IS MADE CLEAR THE FACT THAT THE VICTIM GOT A COUPLE FINGERNAILS ON A PERSON'S ARM I DON'T THINK HOW THAT LOGICALLY ESTABLISHES THAT HE'S THE ONE.
THEY BOTH ADMITTED THEY HAD HANDS ON HER.
AND ONCE AGAIN IT WAS THE JUDGE'S FINDING OF VIOLENCE IN THE SENTENCING ORDER.
WITH THAT I ASKED THE COURT TO REVERSE A NEW PENALTY PHASE.
>> THANK YOU VERY MUCH THE COURT WILL BE IN RECESS FOR TEN MINUTES.